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October 5, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: GN Docket No. 94-90

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Bell Atlantic Mobile Systems, Inc. are an original and four copies of its "Comments" on the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.

Should there be any questions with regard to this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications	)	GN Docket No. 94-90

COMMENTS OF BELL ATLANTIC MOBILE SYSTEMS, INC.

Bell Atlantic Mobile Systems, Inc. (BAM),[1/] by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments on the Commission's Notice of Proposed Rulemaking in this proceeding (FCC 94-202, released August 11, 1994).

I. SUMMARY

The Notice addresses four existing Commission rules which impair competition by preventing certain carriers from providing several types of commercial mobile radio services (CMRS). Section 90.603(c) prohibits wireline telephone common carriers (and affiliated entities) from holding licenses in the Specialized Mobile Radio (SMR) service. A parallel rule, Section 90.703(c),

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1/ Bell Atlantic Mobile Systems, Inc. and its affiliated companies hold or control cellular radio authorizations to operate cellular systems in the Northeast, Mid-Atlantic, Southeast and Southwest regions of the United States. The rules at issue in this proceeding prevent BAM and its affiliates from entering the markets for SMR and dispatch services.

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extends this ban to 220 MHz mobile radio services. Sections 22.519(a) and 22.911(d) bar common carriers holding Part 22 licenses for public mobile or cellular systems from offering "dispatch" services.

The Notice proposes to repeal each of these provisions. (See ¶ 18.) BAM strongly supports the Notice's tentative conclusions, and agrees with the proposed amendments to the Commission's Rules set forth in Appendix A of the Notice. The SMR and dispatch prohibitions should be eliminated for three independent reasons. First, they disserve the public interest by denying numerous companies the ability to expand their service offerings to meet the needs and desires of their customers. Second, they are anti-competitive in that they totally block these companies from entering new businesses and providing new competition to incumbent providers. Third, the rules cannot be legally sustained under the new regulatory structure which Congress imposed on CMRS, because they impose restrictions on some providers which are not imposed on competing providers. The rules should be repealed forthwith.

II. THE PROHIBITIONS ON TELCO OWNERSHIP OF SMR LICENSES SHOULD BE ELIMINATED.

Sections 90.603(c) (and its parallel provision, 90.703(c)) are vestiges of the past which are not only unnecessary, but are unlawful and harmful to the goals of Congress and the Commission for even-handed and vigorous competition in the CMRS industry.

Section 90.603(c) was promulgated in 1974 as part of the general rulemaking establishing the SMR service; the parallel

Section 90.703(c) was later adopted. Neither rulemaking, however, discusses the telco ban, let alone provides any rationale for it. In 1986, the Commission proposed to repeal Section 90.603(c). PR Docket No. 86-3, Notice of Proposed Rulemaking, 51 Fed. Reg. 2910 (1986). It found that whatever the bases for the rule might have been, they no longer existed. To the extent the rule had been based on spectrum allocation and private vs. common carrier considerations, those considerations had been disposed of by other rulemakings and legislation. Id. at ¶ 5. To the extent it had been based on competitive concerns, the Commission concluded that repealing the rule would in fact increase competition: Permitting LEC entry into the SMR market "would provide more efficient service to the public by enhancing competition." Id. at ¶ 6.

In early 1992, despite these findings, the Commission terminated PR Docket No. 86-3 and left Section 90.603(c) in place. PR Docket No. 86-3, Order, 7 FCC Rcd. 4398 (1992). It did not, however, make any findings as to why the rule should be retained. It merely permitted parties holding existing waivers from the rule to submit a request for a permanent waiver.

The waiver requests which were filed in response to the Commission's 1992 Order[2/] demonstrated that Section 90.603(c) was frustrating development of competition in the SMR industry and served no public interest purpose. This remains the case today. There is no basis why LEC or LEC affiliates (or any other carrier)

2/ The record in the waiver proceedings is directly relevant to the issues the Commission is addressing in the new Notice, and should be incorporated into the record of this proceeding.

should not be free to provide SMR service. As the Commission recognizes (Notice at ¶¶ 18-20), it already enforces an array of rules and policies to prevent LEC interconnection practices which could adversely affect competition in the SMR service and other commercial mobile services. Notice at ¶ 27. In fact the Commission has recently determined that allowing LECs to acquire licenses in the Personal Communications Service (PCS) would serve the public by intensifying competition among PCS providers. See Notice at ¶ 17.[3/] That determination is equally true for the SMR service.

In addition, Section 90.603(c) stands as a glaring exception to Congress's mandate to the Commission in the 1993 Budget Act to adopt a symmetrical, consistent set of regulations governing CMRS. Under the Commission's interpretation of the rule, CMRS carriers such as BAM which are affiliates of wireline telephone companies cannot enter the SMR industry, but non-wireline carriers and other competitors can. Parity is undermined because one type of carrier (but not others) is barred from offering to the public a class of mobile service. Worse, the current situation is sharply asymmetrical, since it permits SMR carriers to enter the businesses operated by LECs and their affiliates, but not the reverse.

3/ Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314 (FCC 93-451), at 48-53. The Commission also declined to impose structural separation requirements on LECs or their affiliates which seek to offer PCS service. The Notice (¶ 27) asks whether structural separation should be imposed on LECs if the SMR ban is repealed. It should not. Aside from the absence of any plausible need to go beyond existing accounting and other safeguards, it would be illogical to impose such restrictions on LECs offering SMR when they do not apply to LECs offering PCS.

Putting aside the anti-competitive effect of such a barrier to entry, this asymmetry violates the cardinal goal of new Section 332.[4/]

III. THE PROHIBITIONS ON OFFERING OF DISPATCH SERVICE SHOULD ALSO BE REPEALED.

Sections 22.519(a) and 22.911(d) prevent Part 22 common carriers from offering dispatch service over their systems. These rules were adopted to implement the prior version of Section 332, which contained a prohibition on dispatch services by common carriers. New Section 332(c)(1)(A), however, authorizes the Commission to terminate the prohibition. The Notice proposes to do so. BAM agrees.

There is no technical justification for continuing the prohibitions. They were adopted years ago to ensure that common carriers did not misuse frequencies by devoting them to dispatch use. Even then, that rationale was questionable because a carrier would have had little incentive to provide dispatch service if it interfered with the primary common carrier service being provided. In any event, recent technical developments, including digitalization, have eliminated any conceivable justification for the dispatch provision, because common carriers can offer dispatch service without compromising use of common carrier frequencies. The restriction is therefore unnecessary.

4/ To the extent that Section 90.603(c) was a byproduct of the distinction between private and public mobile services set forth in the prior version of Section 332, the new statute's elimination of that distinction has also removed any conceivable legal validity the rule might once have had.

Eliminating the prohibition will also enhance competition by permitting a wide range of common carriers to enter the commercial dispatch business. Introduction of new competitors will advance the Commission's goals of lowering costs to subscribers while providing increased availability of choice and higher quality service. The present rules only serve to restrict competition. Cellular providers such as BAM may want to offer dispatch services as part of a package of services offered to customers. For example, a customer may use CMRS for a wireless PBX and want a dispatch system for emergencies. Larger cellular subscribers may want a backup dispatch system to call selected cellular phones in an emergency. Thus dispatch can fill the needs of customers as an adjunct to cellular or other CMRS service. There is no valid reason to deny any CMRS licensee the ability to offer whatever services that the public may demand, and this should include dispatch.

Finally, deleting the rule would promote regulatory parity. Today, Part 22 common carriers cannot engage in a service that certain competing CMRS providers can. PCS and SMR licensees, for example, are not restricted in the types of mobile services they may offer. See 47 C.F.R. § 22.3. In fact, Nextel is already offering dispatch services as part of its wide-area SMR operations in California, and is rapidly moving into other geographic markets. This rule is precisely the sort of artificial distinction that Congress intended to dissolve by revising Section 332.

The Notice (at ¶ 32) asks whether the repeal of the dispatch prohibitions should be deferred until August 10, 1996, the end of

the three-year transition period provided in the Budget Act for existing private land mobile licensees to adjust to regulation as CMRS providers. BAM opposes any such deferral. There is no basis for it. The purpose of the transition period was to afford re-classified private mobile service providers time to conform their operations to the rules for CMRS. That purpose is irrelevant to eliminating a restriction currently imposed on certain CMRS providers. Delay would only preserve a barrier to entry that the Notice acknowledges is "outdated" (¶ 31) and impede the growth of competition in the offering of dispatch services to the public.

BAM also opposes the alternative proposals to permit Part 22 carriers to offer dispatch service only on a secondary basis, or to impose a limit on the amount of system capacity that may be devoted to dispatch. Notice at ¶ 33. Either would impose unnecessary regulatory burdens. Carriers have no incentive to offer dispatch in a way that will impede their primary service offerings. Moreover, the Commission did not impose any such limits on Part 24 PCS licensees, but left those licensees free to provide any mobile service. It cannot restrict only Part 22 licensees without violating the goal of regulatory symmetry.

IV. CONCLUSION

For the above reasons, Sections 90.603(c), 90.703(c), 22.519(a) and 22.911(d) of the Commission's Rules should be promptly repealed.

Respectfully submitted,

BELL ATLANTIC MOBILE SYSTEMS, INC.

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Dated: October 5, 1994